

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2019-230-E

IN RE:

**Enrique McMilion, Jr.,
Complainant/Petitioner,**

v.

**Duke Energy Carolinas, LLC,
Defendant/Respondent.**

**Duke Energy Carolinas, LLC's
Reply to Complainant's
Response to Motion to Dismiss
Complaint**

Pursuant to S.C. Code Ann. § 58-27-1990, S.C. Code Ann. Regs. 103-829 and 103-352, and applicable South Carolina law, respondent, Duke Energy Carolinas, LLC (“DEC” or the “Company”) hereby replies to Complainant’s response to the Company’s motion to dismiss filed in the above-referenced proceeding on July 3, 2019 (“Motion to Dismiss”).

BACKGROUND

On December 3, 2018, Mr. McMilion filed a complaint in Docket No. 2018-379-E (“First Complaint”) making various constitutional arguments and requesting that the Company leave in place his existing electricity meter. The Company filed a motion to dismiss the complaint on January 10, 2019, and thereafter filed testimony on March 1, 2019. In Order No. 2019-427, issued on June 12, 2019, the Commission dismissed the First Complaint.

On June 18, 2019, Mr. McMilion filed a complaint in the instant proceeding (“Second Complaint”) indicating that he is unaware of the terms and conditions related to the smart meter serving his residence, and requesting the following: (1) that the Company not install a digital meter at his residence until after “full disclosure of the terms and conditions, signed by DECLLC and myself into a contract or updated terms of agreement,” (2) that service contracts be available

for public viewing, and (3) that his meter be read only once every twenty-eight days. On July 3, 2019, the Company filed a motion to dismiss Mr. McMilion's Second Complaint.

In his response to the Company's Motion to Dismiss, Mr. McMilion argues that, because the meter that is currently on his home was that which was on his home when he began taking service, the Company is somehow prevented from changing the meter. He also argues that the ability of smart meters to measure electricity usage on a more frequent than monthly basis violates S.C. Code Ann. Regs. 103-321, and that smart meters violate his right to privacy. These assertions are responded to below.

ARGUMENT

DEC restates its request that the Complaint be dismissed pursuant to S.C. Code Ann. § 58-27-1990, because the Complaint fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights.

In his response, Mr. McMilion first argues that, because the meter that is currently on his home was that which was on the home when he began taking service, the Company is somehow prevented from changing the meter. This is a flawed position. The customer does not have absolute choice as to the meter employed by the utility to measure its customers' electricity usage. Indeed, from the standpoint of meter testing, ensuring the safety and accuracy of meters, maintenance, and other such practical considerations, it would be inefficient to the point of absurdity to permit each of the utility's customers to choose whatever meter they believed to be the most appropriate. Instead, S.C. Code Ann. Regs. 103-320 provides that "[s]ervice shall be measured by meters furnished by the electrical utility unless otherwise ordered by the commission" That isn't to say that the Company's customers do not have options. As explained in the Motion to Dismiss, customers who oppose the installation of a smart meter may enroll in the

Manually Read Meter (“MRM”) Rider—a program under which interval data is not collected by the Company.

Mr. McMilion also argues that the ability of smart meters to measure electricity usage on a more frequent than monthly basis violates S.C. Code Ann. Regs. 103-321. The Company reasserts its view that the Commission did not intend for Rule 103-321 to prohibit smart meters from transmitting electricity usage data on a more frequent basis than once per month (i.e., “interval data”). First, Mr. McMilion’s central argument is moot because the MRM Rider is an available alternative under which no interval data is collected by the Company. Regulations must be construed as a whole rather than read in its component parts in isolation. If applying the regulation’s plain language would lead to an absurd result, it should be interpreted in a manner that avoids the absurdity. *South Carolina Dep’t of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 261, 725 S.E.2d 480, 483 (2012). As explained in the Motion to Dismiss, the utilization of smart meters enables customers to know more about how they use electricity. This benefit, among others, would be eliminated were smart meters prevented from transmitting interval data. For these reasons, as explained in the Motion to Dismiss, the Company believes that the Commission’s intention in promulgating Rule 103-321 was to ensure that bills are rendered on an approximately monthly basis, i.e., every twenty-eight to thirty-four days.

In his response to the Motion to Dismiss, Mr. McMilion proffers a new argument for this proceeding, which is that smart meters violate his right to privacy. As evidence, Mr. McMilion states that “Duke Energy Carolinas, LLC can deduce how a family chooses to cook their dinner that evening.” While this argument was raised in Mr. McMilion’s previous complaint proceeding, Docket No. 2019-379-E, it was not raised in the complaint filed in the instant proceeding, and is therefore improperly before the Commission. Nevertheless, the Company restates its position as articulated in the motion to dismiss filed in the previous docket that, should a customer have a

concern about the Company's collection of interval data, he may enroll in the MRM Rider, under which no interval data is collected. Instead, a meter reader collects only one number from the meter: the customer's kWh register number. This collection is performed manually by the meter reader reading the kWh register number from the meter's visual display. No interval data is retrieved from the meter by the Company under the MRM Rider, nor could it be through this method.¹

Mr. McMilion also questions why the Company would require the use of a digital meter if the electromechanical meter continues to operate. In brief, as stated in the Motion to Dismiss, the Company no longer supports the use of analog electromechanical meters. Many of the analog meters previously used by the Company were in service for over 30 years, analog meters are now obsolete, are no longer generally available, and cannot be serviced. In light of these factors, it no longer makes sense for the Company to continue the use of analog meters.

Despite Mr. McMilion's assertions, the Company has provided "full disclosure" of the terms governing its provision of service to Mr. McMilion. These terms were provided both in the linked eTariff records in the Motion to Dismiss and, as a courtesy, the tariff records themselves were attached to that motion.

Finally, Mr. McMilion points to a screen-print of the Company's website as evidence that "either party can terminate the contract [for electric service] with 30 days written notice." The contract termination referred to in the screen-print specifically refers to the MRM program. ("Are there early termination fees in the MRM program? The original term of this contract is one year. Thereafter, contract may be terminated by either party with 30 days written notice."). Were a

¹ Ironically, the meter currently serving Mr. McMilion's residence is equipped with a radio transmitter and is currently transmitting his electricity usage data to the Company's drivers. Were he to enroll in the MRM Rider, his residence would be equipped with a meter that does not transmit.

customer to terminate his participation in the MRM program, he would then revert to standard service with an AMI meter. This does not refer to the general contract for service.

CONCLUSION

The Complaint filed in this proceeding fails to adequately allege any violation of a Commission-jurisdictional statute or regulation, and a hearing in this case is not necessary for the protection of substantial rights. Therefore, this matter should be dismissed.

WHEREFORE, DEC moves the Commission to dismiss the Complaint with prejudice, and such other relief as the Commission deems just and proper.

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Columbia, South Carolina
 September 18, 2019

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CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below the **Duke Energy Carolinas, LLC's Reply to Complainant's Response to Motion to Dismiss Complaint** in the foregoing matter by placing a copy of same in the U.S. Mail and/or via electronic mail addressed as follows:

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Dated at Columbia, South Carolina this 18th day of September, 2019.

